IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.08.2007

CORAM:

THE HON'BLE MR.JUSTICE M.CHOCKALINGAM

C.R.P.NPD.NOs. 1467 and 2509 of 2003

C.S.Arumugam ... Petr., in CRP.No.1467 of 2003

1.Thethammal
2.S.Murugesan
3.C.S.Parameswaran ..Petitioners in CRP.No.2509 of 2003

Vs.

1.K.S.Venkateswaran
2.K.S.Ramakrishnan
3.K.S.Jayaraman ...Respdts. in CRP.No.1467 of 2003 and Respdts. 1 to 3 in CRp.No.2509 of 2003

4.C.S.Arumugam ..4th Respdt. in CRP.No.2509 of 2003

CRP.No.1467 of 2003: This Civil Revision petition is filed against the fair and decretal order dated 23.7.2003 made in I.A.No.174 of 2002 in RCOp.No.39 of 1998 on the file of Rent Controller-cum-Prl.District Munsif Court, Coimbatore.

CRP.NO.2509 OF 2003: This Civil Revision petition is filed against the order dated 23.7.2003 made in I.A.No.291 of 2002 in I.A. No.174 of 2002 in RCOp.No.39 of 1998 on the file of the Principal District Munsif, Coimbatore.

For petitioner in CRP.No.1467 of 2003: Ms.R.Gowri

For petitioner in CRP.No.2509 of 2003: Mr.V.Raghavachari for Mr.P.Anbarasan

For Respondents 1 to 4: Mr.S.N.Amarnath in both CRPs

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O R D E R

This order shall govern these two CRPs. viz. CRP.No.1467 and 2507 of 2006.

2.Heard the learned counsel on either side.

3. The respondents in both the CRPs. who are landlords in respect of the premises in question filed RCOP.No.39 of 1998 alleging that the revision petitioner in CRP.No.1467 of 2003 was the tenant under him in respect of the premies on the monthly rent of Rs.2,250/-, that he has not paid the monthly rents from July 1997 to February 1998 and thus he has committed wilful default and he has to be evicted. The respondent therein who is the revision petitioner in CRP.No.1467 of 2003 entered appearance through counsel and filed a counter. Pending the same, the landlords made an application under Section 11(4) of the Tamil Nadu Buildings (Lease and Rent Control) Act. Since no counter was filed, the said application came to be ordered with a direction to the respondent/tenant to make the deposit of entire arrears within the stipulated time. Since the order was not complied with, RCOP. was ordered accordingly. Subsequently, Execution proceedings were taken. At that juncture, the respondent/tenant filed an application to set aside the order of eviction originally passed against him calling it as an exparte order. While doing so, there was a delay of 372 days. In order to condone the said delay, he filed I.A.No.174 of 2002. On contest, the said application was dismissed. Hence, CRP.No.1467 of 2003 has been brought forth by the respondent in the RCOP. Pending that I.A. for condoning delay, the revision petitioners in CRP.No.2509 of 2003 made an application for impleading them as parties in RCOP, since they were also tenants and that application, on contest, was dismissed. Thus, there arose the other Civil revision petition in CRP.No.2509 of 2003. Accordingly, these two CRPs. have arisen before this Court.

4. Advancing their arguments on behalf of the revision petitioners, two contentions were raised before this Court. Firstly, the order that was passed by the Rent Controller in RCOP.No.39 of 1998 against the revision petitioner in CRP.No.1407 of 2003 was an exparte order and even without any contest, eviction order was passed and hence it has got to be set aside and that an application has been filed with a delay of 372 days and sufficient reasons were adduced for the said delay and in order to give an opportunity, the lower Court should have condoned the delay. Hence, the said application has got to be set aside. The second contention that was raised is that the premises in question belonged to the respondents and they were not only impleaded as respondents in CRP.No.1407 of 2003, but also in CRP.No.2509 of 2003, and they were put in possession consequent upon the orders passed in Contempt Application

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No.2 of 1983, when there was a compromise entered into between the landlords and the alll these revision petitioners who are four in number and as per the agreement, the tenancy commences as found in the memorandum of compromise dated 1.10.1989 on the monthly rent of Rs.2,250/- and a sum of Rs.6,000/- was paid towards advance. Thus, all these revision petitioners were put in possession, pursuant to the tenancy and the same tenancy continued, even at the time of filing RCOP. Under such circumstances, the other three tenants who are revision petitioners in CRP.No.2509 of 2003 should also have been added as party, otherwise RCOP. itself was defective. Under such circumstances, though they filed an application to implead them as parties to the main RCOP. in I.A.291 of 2002, without considering the legal position, the lower Court has dismissed the application. Under such circumstances, the order of the lower Court has got to be set aside.

5. In answering to the above, counsel for the respondents/landlords would submit that what was passed by the lower Court in RCOP.No.39 of 1998 was not an exparte order, it was only an order passed originally under Section 11(4) of the Act with a direction to make the deposit of entire arrears of rent. Consequently, RCOP. came to be ordered , thus it was not an exparte order, but orders were passed only on merits. If really the revision petitioner in CRP.No .1467 of 2003 was aggrieved over that order, he should have preferred an appeal, instead he has filed an application to set aside, the exparte decree and also to condone the delay of 372 days in filing the said application. Under such circumstances, the lower Court has no other option than to dismiss the application. Hence, the order of the lower court has got to be sustained. Insofar as the second contention is concerned, at the relevant point of time, the revision petitioner in CRP.No.1467 of 2003 was the only tenant who was making the rent and thus there was a tenancy relationship between the landlord and the tenant and thus the landlord has filed RCOP. against him only . Even in the counter filed by the revision petitioner in CRP.No.1467 of 2003, he has categorically admitted that he was the tenant. Under such circumstances, no question of adding any party would arise. The lower court was perfectly correct in dismissing the application and hence the orders of the authorities below have got to be sustained.

6. After careful consideration of the rival submissions made, this Court is of the considered opinion that the orders of the authority below have necessarily got to be set aside for more than one reasons. RCOP.No.39 of 1998 was filed by the respondent /landlord against one Arumugham who is the revision petitioner in CRP.No.1467 of 2003 calling him as only tenant in respect of the petition mentioned premises. But, that is not so. From the proceedings that were actually placed before this Court, it is clear that by way of contempt appeal in C.A.No.2 of 1988, the proceedings came to a close by way of compromise between the parties and it was also recorded therein. A perusal of the order would clearly reveal that all the respondents are shown as landlords of the revision petitioners in both the revision petitions viz., petitioner in CRP.No.1467 of 2003 and petitioners in CRP.No.2509 of 2003 who are three in numbers.

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Totally all the four were shown as tenants. According to the landlords, from 1.10.1983, the monthly rent was fixed at Rs.2250/- and advance was also paid. At this juncture, the contention put forth by the revision petitioners that the tenancy agreement which continued to be in force, has got to to be accepted. A reading of the RCOP.No.39 of 1998 would clearly indicate that nowhere the petitioner has clearly stated when the tenancy was commenced. But simply averred that the respondent was the tenant in the said premises, but that is not the case here, all the four petitioners were tenants under them. Pursuant to the agreement of tenancy entered into between the parties, by way of compromise entered into in the year 1989, in C.A.No.2 of 1988 and when the agreement was continued to be in force, RCOP.No.39 of 1998 was filed. If that be the case, RCOP. should have been filed by the landlords against all the four tenants, not against only one tenant. Under such circumstances, RCOP.No.39 of 1998 itself is found to be defective in law. At this juncture, now it is pointed out that it is a case where other three tenants, filed an application to implead them as parties and now there cannot be any legal impediment to allow them to participate in the proceedings and thus the order passed in the application by the lower court is set aside and they are allowed to be impleaded as parties to RCOP.No.39 of 1998.

7. True it is that the order passed under Section 11(4) of the Act directing the tenant/petitioner in CRP.No.1407 of 2003 to make the entire deposit ,was not complied with. Following the same, another order came to be passed in main RCOP. and in so far as that order is concerned, it is only an appealable order. Hence, appeal should have been preferred, but the tenant did not prefer any appeal, instead calling it as an exparte order by filing an application to set aside the exparte order and while doing so, a delay of 372 days has occasioned and he filed an application to condone the delay and the lower court has dismissed the said application. The lower Court was perfectly correct in dismissing the said application. But, now it is pointed out that even that order had been passed in RCOP. against only one tenant, even on merit and that will not stand in the way of impleading the petitioners in CRP.No.2509 of 2003 and that order has got to be set aside without any hesitation and the parties who are three in number,i.e. the revision petitioners in CRP.No.2509 of 2003, are necessarily to be added as respondents in the original RCOP. Hence, original RCOP.39 of 1998 has got to be amended by adding the petitioners in CRP.No.2509 of 2003 as respondents and they should be given an opportunity by filing their counter. The matter must be decided on merits making fresh enquiry over the same.

8. Learned counsel for the respondents/landlords would submit that even after the rents were made by way of entire deposit before this Court, there was rental arrears . For the above contention, the learned counsel for the revision petitioners has given an undertaking that the revision petitioners shall make the payment of entire arrears as on today to the opposite party, within a period of four weeks here from. It is made clear that all the respondents who are impleaded as respondents 2 to 4 should be given an opportunity for filing counter in the main RCOP. The

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lower court is directed to take up the matter, proceed with the same and pass orders in accordance with law.

8. The Civil Revision Petitions are disposed of. No costs. Consequently, CMP.No.18860 of 2003 is closed.

Vjy

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1.The Prl. District Munsif (Rent Controller)Court,
Coimbatore.

2.The Section Officer, V.R.Section,
High Court, Madras.

+1 cc to Mr.M.Murali Advocate Sr.No.50223.

+1 cc to Mr.T.S.sivagnanam, Advocate Sr.No.49871.

+1 cc to Mr.S.N.Amarnath, Advocate Sr.No.49667.

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